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Supreme Court of the United States

OCTOBER TERM, 1996

HONEYWELL, INC.; HONEYWELL PENSION AND RETIREMENT COMMITTEE, on their own behalf and on behalf of the Honeywell Retirement Investment Plan, Investment Plus Plan of Honeywell, Inc., and Honeywell Retirement Savings Plan; AND FIRST TRUST NATIONAL ASSOCIATION,

Petitioners,

v.

MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Minnesota violated the Contract Clause or Due Process Clause when it retroactively extinguished a fully matured, non-contingent obligation to pay money due to a trustee of employee retirement and benefit plans in order to free up funds for payment to other workers, where the payment obligation was unambiguous under prior law, had been judicially confirmed more than five years earlier, and had been left in place by the state legislature, providing economic benefits to the obligor itself.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners are the sponsor, administrator, and trustee of certain employee-benefit and -retirement plans for employees and retirees of Honeywell.[1] Plan money was invested in certain annuity contracts—which were owned by the Trustee—when, in 1991, the issuing insurance company became insolvent and went into liquidation. The law in Minnesota, as confirmed by the Minnesota Supreme Court, unambiguously required that, upon such a failure, the Minnesota Life and Health Insurance Guaranty Association—respondent here—must assume the contractual obligations that the failed insurer owed to a contract owner, like the Trustee, who was a resident of Minnesota; and the Association for years relied on these types of trustee-owned annuities to expand its assessment base to raise the money to stand behind the State's insurance-industry guarantees. Upon the insurer's failure, the Association thus became the obligor on the annuity contracts.

When petitioners asked for payment on those obligations, however, Minnesota enacted a law that, in express terms, retroactively cancelled the Association's obligation to pay these assumed debts. The new law extinguished the Association's obligations to the Trustee as contract owner and directed, instead, that the Association make payment only to the individual trust beneficiaries who were Minnesota residents, but not to the non-Minnesota beneficiaries of the plan. At the same time, the law required the Association for the first time to assume liabilities to Minnesota workers covered by plans with out-of-State trustees. The legislature, in short, cancelled debts unambiguously owed to one party in order to free up money to pay other

[1] Pursuant to this Court's Rule 29.6, petitioners state: Honeywell, Inc., has no parent company; a list of Honeywell's nonwholly owned subsidiaries is included as Appendix H, *infra*; First Trust National Association is owned by First Bank System, Inc.; a merger of First Bank System, Inc. with U.S. Bancorp. is pending.

persons it thought more deserving. Petitioners' annuity contracts are the only ones in the State that are reached by this retroactive abrogation of a plain right to payment.

The United States Court of Appeals for the Eighth Circuit, by a fractured *en banc* court, nevertheless upheld the new law against a challenge under the Contract Clause and Due Process Clause. Petitioners seek review of that judgment.

OPINIONS BELOW

The opinions of the court of appeals sitting *en banc* (Pet. App. 1a-31a) are reported at 110 F.3d 547. The opinion of the court of appeals panel (Pet. App. 32a-49a) is reported at 86 F.2d 766. The final opinion of the district court (Pet. App. 50a-64a) is not reported. The opinion of the Minnesota Supreme Court on certification of two state-law issues (Pet. App. 67a-80a) is reported at 518 N.W.2d 557. The pre-certification opinion of the district court (Pet. App. 81a-115a) is not reported.

JURISDICTION

The judgment of the court of appeals sitting *en banc* was entered on April 2, 1997. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. §§ 1254(1), 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Contract Clause of the United States Constitution (Article I, Section 10, Clause 1) provides: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides, in Section 1: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

The Minnesota Life and Health Insurance Guaranty Association Act, Minn. Stat. Ann. ch. 61B, in effect at

the time of insolvency in this case (1991), is set forth in full at Pet. App. 116a-136a. Section 61B.06, subdivision 2, of the Act provided:

> Subd. 2. **Impaired foreign or alien insurer.** If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations which are due and owing to residents.

Section 61B.03, subdivision 5, provided:

> Subd. 5. **Contractual obligation.** "Contractual obligation" means any obligation under covered policies.

On April 27, 1992, a new statute, 1992 Minn. Laws ch. 540, art. 2, became law. Section 14 amended Section 61B.03, subdiv. 5, of the Guaranty Act to read:

> Subd. 5. **CONTRACTUAL OBLIGATION.** *(a)* "Contractual obligation" means any obligation under covered policies, *except as provided in paragraphs (c) and (d) of this subdivision.*
>
> *(b) For purposes of this chapter, contractual obligation includes an unallocated annuity contract which funds a qualified defined contribution pension plan pursuant to Internal Revenue Code of 1986, sections 401(k), 403(b), and 457.*
>
> *(c) Notwithstanding the definition of contractual obligation contained ~~in~~ paragraphs (a) and (b), contractual obligation does not include any obligation to nonresident participants of a covered plan or to the plan sponsor, employer, trustee, or other party who owns the contract; in such cases, the association is obligated under this chapter only to participants*

in a covered plan who are residents of the state of Minnesota on the date of impairment.

(d) Except as provided in paragraphs (a) and (b), contractual obligation does not include an unallocated annuity contract issued in connection with a defined benefit plan protected by the federal Pension Benefit Guaranty Corporation, or a contract issued to, or purchased at the direction of, any governmental bonding authorities, such as a municipal guaranteed investment contract.

Section 23 of the same 1992 Amendment provides that the foregoing provision was "intended to clarify existing law and [shall] apply to all covered policies or contracts issued or renewed by insurers which became insolvent after May 27, 1977."

STATEMENT

A. Statutory and Factual Background

1. Minnesota created the Guaranty Association, respondent here, so that the entire life and health insurance industry of the State would stand behind the obligations of each member of the industry. Consisting of all insurers who seek and obtain authorization to do business in the State (Act § 61B.04, subd. 1), the Association is governed by a Board of Directors approved by the State's Commissioner of Commerce (Act § 61B.05, subd. 1) and acts "under the immediate supervision of the commissioner" (Act § 61B.04, subd. 2). *See* Act § 61B.09, subd. 3 (Board decisions subject to review by the Commissioner); Pet. App. 94a nn.19, 20 (Commissioner's powers).[2] The Act states that its purpose is "to enable

[2] "Act" refers to the version of the Minnesota Life and Health Insurance Guaranty Association Act, reprinted at Pet. App. 116a-136a, that was in effect in 1991, the year of the insurer's failure at issue here. The Act was originally enacted in 1977 and was modified slightly over the years. A few changes in the Act were made

the guaranty of payment of benefits and of continuation of coverages" of failed insurers, that it "shall be liberally construed to effect" its purpose, and that the Association's members are "subject to assessment to provide funds to carry out" this purpose. Act § 61B.02, subd. 2, 3.

As relevant here, the Act declares that, when a non-Minnesota insurer becomes "impaired" and is placed under an order of liquidation, rehabilitation, or conservation,

> the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations which are due and owing to residents.

Act § 61B.06, subd. 2.[3] At the relevant times, the Act simply defined "contractual obligation" to mean "any obligation under covered policies" (Act § 61B.03, subd. 5) and "covered policy" to mean "any policy or contract owned by a Minnesota resident" within the Act's scope (Act § 61B.03, subd. 6), including "annuity contracts" issued by insurers authorized to transact business in the State (Act § 61B.02, subd. 1).[4] A "resident" under the

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between 1988, when the annuity contracts at issue were purchased, and 1991, when the insolvency triggered its application. *See* note 4, *infra*. In 1993, Minnesota recodified and somewhat modified the Act, but it left most of the substance unchanged, and the legislature provided that the pre-1993 version of the law continued to apply to cases like this arising out of earlier failures. *See* Pet. App. 69a n.4.

[3] Subdivision 3 of that section, immediately following the quoted directive, identifies conditions that the Association, in carrying out its duties under Subdivision 2, may ask the Commissioner to approve, such as the imposition of liens or moratoriums on certain payments. Act § 61B.06, subd. 3.

[4] The phrase "owned by a Minnesota resident" was added to the definition of "covered policy" in 1989. *See* Pet. App. 96a. Other

Act is "any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed." Act § 61B.03, subd. 13. The term "person" is not limited to individuals, but covers any "corporation, partnership, association or voluntary organization" as well. Act § 61B.03, subd. 12.

In order to fund its payment obligations to resident owners of covered policies, the Association is directed to make assessments on its members, *i.e.*, on all insurers authorized to do business in the State. Act § 61B.07, subd. 1. Insurers are assessed separately for each of three accounts —health insurance, life insurance, and annuities. Act § 61B.04, subd. 1. In the event that the Association must assume an out-of-State insurer's payment obligations in a particular account (under Act § 61B.06, subd. 2, quoted above), the member insurers are assessed according to the amount of "premiums received on business in [the] state" for that particular account, up to two percent annually of the insurer's yearly premiums for that account. Act § 61B.07, subd. 3(b), subd. 4.

In 1987, the Court of Appeals of Minnesota held that the Act covers "unallocated annuity contracts," including "guaranteed investment contracts (GICs)," which are "annuity contracts" that are "not issued to or owned by a named individual" but are "issued primarily under pension fund and profit sharing plans" to the trustee. *Minnesota Life and Health Ins. Guaranty Ass'n v. Department of Commerce*, 400 N.W.2d 769, 770 (Minn. App. 1987); *id.* at 775. (That construction was later confirmed by the Minnesota Supreme Court in its ruling in the present case. Pet. App. 75a.) By 1987, such unallocated annuity contracts had become prevalent nationwide and in Min-

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changes made in 1991 are indicated in the margin at Pet. App. 124a, 125a-26a, 134a-35a. Certain identified policies or contracts are excluded from the scope of the Act (Act § 61B.02, subd. 2), but none of those exclusions applies in this case.

nesota. As a result, since 1987, the Association relied on the premiums from (Minnesota-resident) trustee-owned unallocated annuities to expand substantially the base on which assessments could be and have been levied, thus benefiting from the larger reservoir backing insurers' annuity obligations. *Minnesota Life*, 400 N.W.2d at 771 (unallocated annuities expanded assessment base from $389 million to $641 million).[5] For five years, the Minnesota legislature took no step to alter the judicially confirmed coverage, even as it amended the Act in other respects. *See* note 4, *supra*.

2. In 1988, the Honeywell plans invested in guaranteed investment contracts issued by Executive Life Insurance Company of California, a California company (and hence a "foreign" insurer under the Act) authorized to transact business in Minnesota (and hence a member of the Association). The plans paid more than $111 million to Executive Life, which was to pay out the original investment, plus specified interest, minus withdrawals, on designated schedules ending by April 1993. As required under ERISA, the contracts were owned by the plan trustee (Pet. App. 74a-75a), who, soon after the 1988 purchase, became IDS Trust, a Minnesota resident, the predecessor of petitioner Trustee, also a Minnesota resident.

In April 1991, Executive Life "became insolvent and unable to fulfill its contractual obligations on the Honey-

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[5] *See* General Accounting Office, "Insurer Failures: Life/Health Insurer Insolvencies and Limitations of State Guaranty Funds," in *Insurance Guaranty Funds and the Involuntary Transfer of Insurance Policies*, Hearings before the Subcomm. on Antitrust, Monopolies and Business Rights of the Senate Judiciary Comm., 102 Cong., 2d Sess. 55 (1992): "Unallocated annuities are investment contracts typically purchased by businesses and state and local governments to fund portions of their retirement plans. . . . [T]hese contracts are generally marketed by insurers in competition with investment products sold by other financial institutions. . . . [According to one study of 174 large pension plans,] 28 percent of defined contribution plan assets were held in guaranteed investment contracts with insurance companies." (footnote omitted).

well GICs." *Id.* at 3a. In January 1992, the month after Executive Life was placed under an order of liquidation by a California court, petitioners formally requested that the Association make payment under the annuity contracts, the "contractual obligations" that the Act required it to assume. The Association put off an answer. *Id.* at 3a-4a.

Instead, in April 1992, the Minnesota legislature enacted an amendment to the Act's definition of "contractual obligation" that specifically cancelled the Association's obligation to the resident trustee—"the one to whom the contractual obligation was owed." *Id.* at 4a; *see* 1992 Minn. Laws ch. 540 [hereafter "Amendment"], amending Act § 61B.03, subd. 5 (quoted at pages 3-4, *supra*). The Amendment replaced that obligation to the contract owners with a new duty on the part of the Association to make payments to individual plan participants, but only those who reside in Minnesota. *See* Pet. App. 5a. The legislature thus wiped out the Association's obligation to the trustee, depriving all the out-of-State participants (roughly 27,000 of the 36,000 participants in the Honeywell plans) of the benefit of that obligation. *Id.* at 3a-4a. In so doing, the Amendment freed up the funds to make payments to a previously uncovered group, the roughly 10,000 Minnesota residents who were participants in *other* companies' pension plans that owned Executive Life annuities but had *non*-resident trustees—whose contracts, therefore, were not covered by the Act, either to receive protection or to add to the assessment base. *See id.* at 4a. The legislature specifically made the Amendment retroactive back to 1977, but it is uncontested that the only unallocated annuity contracts retroactively covered by this change in law are those of petitioners.[6]

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[6] It now appears that approximately 90% of the value of Executive Life annuities should be recovered as a result of the liquidation proceeding. Consequently, the amount actually at issue for the Association is far less than the $111 million described by the Eighth

B. The District Court and Minnesota Supreme Court Decisions

1. Petitioners brought this action in state court in Minnesota, seeking, among other things, a judgment that the 1992 Amendment's expressly retroactive cancellation of their contractual rights violated the Contract Clause and the Due Process Clause. The Association removed the case to federal court. Pet. App. 6a. On cross-motions for summary judgment, the district court agreed with petitioners that the 1992 Amendment was invalid under both clauses. *Id.* at 81a-115a.

In response to the Association's primary defense, *i.e.*, that the Amendment merely "clarified" the Act's coverage, the district court concluded that the Amendment in fact substantively altered the coverage that "the Act clearly and unambiguously provided" to the Trustee as contract owner. *Id.* at 93a; *see id.* at 89a-98a. The district court also concluded that the obligations cancelled by the Amendment were contractual in nature, pointing to the voluntary action of petitioners (in purchasing the annuities) and of the Association's members (in choosing to do business in Minnesota). *Id.* at 110a.[7] Moreover, "Honeywell's right to enforce [the Association's contractual] liability had become 'fully perfected and vested' prior to the Amendment" (*id.*), because " 'nothing remain[ed] to be done by the party asserting [the liability]' " (*id.* at 105a). The Amendment therefore was unconstitutional under several of this Court's decisions, particu-

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Circuit. Although there is no established figure in the record, the Association stated below, in what petitioners believe to be a significant overestimate, that the amount now at stake is about $25 million. The amounts that the 1992 Amendment newly required to be paid (to previously uncovered Minnesota-resident beneficiaries of plans with out-of-State trustees) is roughly comparable to the amounts stripped from petitioners.

[7] Minnesota's Commissioner testified before Congress in 1992: "The fund is really the insurance companies that stand behind it." *Hearings, supra,* at 81.

larly *Coombes v. Getz*, 285 U.S. 434 (1932), which held that California had violated both the Contract Clause and Due Process Clause by repealing a law making corporate shareholders responsible for the corporation's contractual debts to others upon certain occurrences, where the repeal was made retroactive to extinguish already matured obligations. Pet. App. 103a-111a.

2. Shortly after its ruling, the district court reconsidered its ruling and decided to certify two questions to the Minnesota Supreme Court: (1) did the 1992 Amendment "clarify the Association's coverage obligations under the Act or effect a substantive change in those obligations?" and (2) "[i]s the right to payment created in favor of annuity contract owners in [Act] § 61B.06, subd. 2 a purely 'statutory' right or a right that is 'contractual' in nature?" *See* Pet. App. 73a. The Minnesota Supreme Court answered both questions as a matter of state law. *Id.* at 67a-80a.

The Minnesota Supreme Court observed that unallocated annuity contracts like the guaranteed investment contracts at issue, which had been the subject of the 1987 *Minnesota Life* ruling, were well understood by that time to be owned by plan trustees, not by individual participants, and were covered under the comparable statutes of at least 14 other States. *Id.* at 74a, 76a. The court specifically rejected the Association's contention that payment to the trustee represented an "unintended windfall," concluding that "resident trustees who own unallocated annuity contracts are *unambiguously* entitled to coverage under the terms of the Act prior to the Amendment," and "[t]he Association *is obligated to guarantee* the covered policies of residents." *Id.* at 75a (emphasis added). The court ruled that there was "no doubt" that the trustee was owed "contractual obligations" (*id.*) and that resident trustees, as contract owners, were "plainly entitled to coverage" (*id.* at 76a). *See id.* at 78a ("the statute is unambiguous"). The court also explained that the Association had

in fact been taking advantage of this coverage for its own funding:

> [T]he Association prior to 1992 assessed insurers issuing unallocated annuity contracts based upon the amount of premiums received from resident contract owners, not based upon amounts attributable to individual resident beneficiaries. One expects the Association would not have assessed members based upon the amount of premiums received from resident contract owners if it understood coverage obligations to be owed solely to resident plan participants.

Id. at 77a (footnote omitted). The state supreme court thus held that the 1992 Amendment substantively changed the Act by wiping out the Association's obligation to the Trustee. *Id.*

The court answered the second certified question briefly (*id.* at 79a-80a), holding that "the right to payment is a purely statutory right under state law" (*id.* at 79a). The court stated that, "[t]o the extent an annuity contract owner enjoys any rights against the Association, it is because they are set forth in a statute." *Id.* (footnote omitted). It added that the Association's "statutory obligations are not coextensive with the contractual obligations of a failed insurer" (*id.*), though it did not indicate that a partial guarantee was any less contractual or, more pointedly, rule that the Association or the Commissioner either were empowered to cancel annuity obligations owed to annuity owners or ever had done so.[8] Finally, the

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[8] The court noted the provision that the Association's obligations are "subject to any conditions imposed by the association and approved by the commissioner," a provision immediately followed by authorization merely for moratoria and liens (Act § 61B.06, subd. 2, 3). The court also cited the provision setting aggregate liability limits for life-insurance policies (Act § 61B.06, subd. 8), which the court expressly held did not apply to annuities owned by trustees (Pet. App. 79a). The court also had declared earlier in the opinion: "The Association is obligated to guarantee the covered policies of residents." *Id.* at 75a.

court concluded that no contractual relationship exists between the Association and *its members,* because that relationship is required by statute (*id.* at 79a-80a), and it asserted that "[t]here exists no contractual relationship between the Association and annuity *contract owners*" (*id.* at 79a (emphasis added)), though it did not specifically address whether a contractual relationship existed between the Association and contract owners once the insolvency triggered the Association's assumption of the contractual obligations, as had occurred here before the Amendment wiped out the obligation.

3. After the state supreme court rendered its opinion on the certified state-law questions, the district court changed its mind about the merits of petitioners' federal constitutional challenges, which it now rejected. Pet. App. 50a-64a. It rejected the Contract Clause claim in reliance on the state supreme court's ruling that the Act created statutory, but not contractual, rights under state law. *Id.* at 62a-64a. For essentially the same reason, the court also now concluded that petitioners had no vested rights such as those protected under *Coombes* (*id.* at 56a-60a) and that due process was satisfied because the Amendment rationally served the asserted legislative purpose "to protect resident plan participants and avoid an unintended windfall for non-residents" (*id.* at 61a)—though the state supreme court had expressly rejected the claim of "unintended windfall" (*id.* at 75a-76a).

C. The Court of Appeals Rulings

A panel of the Eighth Circuit affirmed (*id.* at 32a-49a), but the full court decided to rehear the case *en banc* and itself affirmed the district court's rejection of petitioners' constitutional challenges. *Id.* at 1a-31a. The court was divided on the result 7-5, and it produced three separate opinions. On the Contract Clause issue, there was no majority rationale for rejecting the claim. Indeed, a majority of the *en banc* judges agreed that the Amendment substantially impaired their contracts, and of the seven

judges who went on to address whether this impairment was nevertheless justified, five concluded that it was not.

Judge Hansen, joined by only four other judges, concluded that the Amendment was consistent with the Contract Clause on the ground—rejected by the other seven judges of the Eighth Circuit—that the obligation extinguished by the Amendment was not a contractual obligation. *Id.* at 9a-10a. Judge Hansen reasoned that the Act did not create any contractual obligation against the State itself (*id.* at 9a) and that the Association's obligations to a contract owner—even, apparently, after the occurrence of the insurance company failure that triggered the mandated assumption of the annuity—were "statutory in nature rather than contractual," because the contract owners did not bargain with the Association and the Act's requirement of assumption of covered annuities by the Association did not "affect the validity, construction, and enforcement" of those annuity contracts. *Id.* at 10a (citing *General Motors Corp. v. Romein*, 503 U.S. 181, 189 (1992)). Having concluded that the impaired obligations were not "contractual," Judge Hansen and his colleagues did not address whether the impairment was justified under Contract Clause standards.

Judge Hansen, speaking for a majority, also rejected the due process claim, though stating that it "presents a closer question." *Id.* at 10a. *See id.* at 19a (Judges Loken and Bowman concurring in this part of Judge Hansen's opinion). This majority acknowledged the strong protection afforded accrued rights to payment (or "vested rights") under *Coombes* and related precedents, but it reasoned that those precedents, though never overruled, were now of questionable validity and expressly chose to "rely instead on the more recent Supreme Court pronouncements of substantive due process analysis for economic legislation, which articulate a rational basis test." *Id.* at 12a, 14a. The majority then found that test satisfied, despite the fact that the trustees (and non-

resident plan participants) whose funds were being used to pay for this new protection were in no way responsible for the plight of the benefited class, thus distinguishing the present case from this Court's recent cases involving retroactive imposition on employers of additional obligations to employees for harms traceable to the employment relationship. *Id.* at 17a. The court reasoned that Minnesota had a legitimate purpose in providing economic protection to its own resident plan participants (*id.* at 15a) and that the Amendment was "curative in nature, even though it worked a substantive change in the law" (*id.*), because payment of the obligations to the resident trustees would be "an unintended windfall" (*id.* at 16a). Relying centrally on *United States v. Carlton*, 512 U.S. 26 (1994) (*see* Pet. App. 12a-16a), the majority concluded that the 1992 Amendment "cure[d] a drafting defect" in the Act (*id.* at 16a)—without mentioning that it had been clear since 1987 that unallocated annuities owned by resident trustees were covered, that such coverage was unambiguous under the Act, that the Association had been relying economically on that coverage to expand its assessment base since 1987, and that the legislature (while amending the Act in other respects) had left that judicially confirmed coverage in place until 1992.

Judges Loken and Bowman concurred in the result, but only after concluding (along with five other judges, *see id* at 26a-28a) that the Amendment did substantially impair contractual obligations. *Id.* at 19a-26a. They explained that the Association's guaranty obligation triggered by the Executive Life insolvency, and the annuities themselves, were contractual obligations to the Trustee as contract owner (*id.* at 20a-21a) and that the Amendment's effect on the Trustee's claim (extinguishing it and substituting payment to only 25% of the plan participants) was anything but "incidental to another legislative purpose; the statute was enacted to impair" (*id.* at 21a). Judges Loken and Bowman concluded, however, that this substantial impairment was constitutionally justified as a reasonable

correction of a "substantial unforeseen consequence" of the Act (*id.* at 24a), as the majority concluded (in reliance on *Carlton*) with respect to the due process claim.

Judge Richard S. Arnold, joined by four other judges, dissented on the Contract Clause. *Id.* at 26a-31a. Like Judges Loken and Bowman, the dissenters concluded that the Amendment substantially impaired the obligations on petitioners' contracts with Executive Life, and with the Association upon the guarantee-triggering insolvency. *Id.* at 26a-28a. The dissenters then explained that the State lacked constitutionally sufficient justification for the impairment. In particular, it rejected the critical assertion of "unforeseen consequences or windfall benefits," because the Minnesota Act's coverage of resident trustees' unallocated annuities was "not only foreseeable, but readily ascertainable" based on the unambiguous text of the statute and the 1987 *Minnesota Life* decision. *Id.* at 28a-29a. The dissenters concluded that the Amendment violated the historical, core principle of the Contract Clause barring a State from retroactively extinguishing fully ripened obligations to pay money. *Id.* at 29a-31a.

REASONS FOR GRANTING THE PETITION

The Minnesota legislature, seeking to free up funds for payment to its own residents, enacted expressly retroactive legislation to cancel the Association's unambiguous, outstanding obligation on annuity contracts owned by petitioner Trustee. The *en banc* court of appeals, though in considerable disarray about the rationale and divided 7-5 on the result, held this overt extinguishment of a matured debt to be constitutional, relying on the legitimacy of the State's purpose of protecting state residents' economic interests and its characterization of the debt-cancelling law as "curative." The court's ruling warrants review because it presents important questions about the survival of long-standing, vital limits on governmental power to terminate obligations (properly held to be contractual by a majority of the Eighth Circuit) that were clear and binding under prior law.

The Eighth Circuit's upholding of the Minnesota statute rests on a fundamental, and dangerous, misunderstanding of recent constitutional doctrine. Of course, many decisions of this Court, under the Contract Clause and the Due Process Clause, recognize flexibility in legislative power to make various retroactive adjustments in economic interests. But amidst those decisions, this Court has never abandoned the constitutional principle that sharply curtails a State's authority simply to deprive private parties of their established rights to payment, whether from the State itself or from private parties. *See, e.g., Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). The Eighth Circuit ruling strikes at the remaining core of constitutional protection.

The Eighth Circuit justified its decision by repeatedly stressing that a State has a legitimate interest in assuring the protection of its own residents in the event of an insolvency. But the legitimacy of the State's ends is only half the inquiry. The remaining issue—and the critical one in this case—is whether a State may raise the funding for this goal by the means of stripping a narrow class (here, in fact, a single Trustee) of its clear right to payment under prior law. In holding that it may, the Eighth Circuit has improperly set aside the fundamental constitutional principle that limits a State's ability to impose public burdens on a narrow class of private parties who are not themselves responsible for the plight of the class benefited by the legislation. This essential principle, just as it forbids a State to dishonor its own obligations in order to pursue the valid goal of conserving money for its citizens (*United States Trust Co.*), likewise must forbid a State to excuse third parties from their debts in order to divert funds for the same purpose.

The Eighth Circuit also tried to justify the 1992 Amendment as merely "curative," but that rationale likewise warrants review. By so characterizing the law, the Eighth Circuit engaged in just the sort of limitless expansion of

that term that Justice O'Connor warned against in *Carlton*, 512 U.S. at 36 (concurring opinion), which involved an immediate legislative correction of an obviously unintended tax result (under language not authoritatively construed by this Court actually to require that result). In this case, by contrast, the State abrogated a payment obligation that, according to two authoritative judicial decisions, was unambiguous under prior law; the legislature left the obligation in place for five years after it was judicially confirmed; and the Association itself took advantage of that judicial construction for that entire period. This Court should rein in the Eighth Circuit's misuse of the *Carlton* principle.

Finally, the Eighth Circuit's treatment of this Court's decision in *Coombes v. Getz*, 285 U.S. 434 (1932), along with related cases such as *Ettor v. City of Tacoma*, 228 U.S. 148 (1913), merits review. The Eighth Circuit did not seriously question that *Coombes*, decided under both the Contract Clause and the Due Process Clause, is closely on point and condemned legislation very similar to the Minnesota legislation at issue here. Nevertheless, a majority declined to follow the principles of *Coombes* for due process purposes, deeming them of questionable current validity; and five of the judges refused to find a contract protected by the Contract Clause with only the weakest bow in the direction of *Coombes* on essentially indistinguishable facts. This Court has made clear, however, that a lower court may not disregard a Supreme Court precedent as if it had been overruled. *Rodriguez De Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484-85 (1989). It is the responsibility of this Court alone to consider whether a precedent should be disregarded as out of step with more recent doctrine. In fact, *Coombes* and its predecessors remain good law in prohibiting an outright extinguishment of a matured obligation to pay money.

A. THE EIGHTH CIRCUIT IMPROPERLY UPHELD AN OUTRIGHT RETROACTIVE ABROGATION OF AN OBLIGATION TO PAY A DEBT AS A MEANS OF FREEING UP MONEY FOR OTHERS

The Eighth Circuit concluded that, under modern Contract Clause and Due Process doctrine, though the Association was fully obligated to reimburse the Trustee prior to the Amendment, Minnesota had wide latitude to cancel those obligations in pursuit of a valid public purpose and that, here, the State was validly undertaking to assist resident beneficiaries not protected by the pre-Amendment statute. But this analysis, even taken on its own terms, is incompatible with both the history of the constitutional doctrines and their proper application. Consistent with the Court's recent reminder that property rights are not a "poor relation" of other constitutional rights (*Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994)), this Court has never held, or even suggested, that States enjoy a broad freedom directly to extinguish debts owed by themselves or by private parties.

1. From the beginning, the Constitution has embodied a steadfast principle: that state governments are *not* generally free to cancel either their own debts or those of private parties. The Contract Clause was specifically drafted to put a halt to "legislative schemes for the defeat of creditors and the invasion of contractual obligations." *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 427 (1934). As Chief Justice Marshall observed in *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 354 (1827) (dissenting opinion), it had become common practice for state legislatures in the late 18th Century to abuse "[t]he power of changing the relative situation of debtor and creditor, of interfering with contracts." This Court stated a decade ago that the "primary focus [of the Contract Clause] was upon legislation that was designed to repudiate or adjust pre-existing debtor-creditor relationships that obligors were unable to satisfy." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470,

503 (1987). *See* 2 R. Rotunda & J. Nowak, *Treatise on Constitutional Law* § 15.8, at 437 (1992) ("[t]he framers drafted the contract clause to prevent the states from enacting debtor relief laws").

Although the attention paid the Contract Clause has varied over the course of our constitutional history (*see id.* at 437-56), the Clause repeatedly and consistently has been applied to achieve its central purpose: to prevent States from cancelling their own debts or the debts of private parties. *See, e.g., Coombes* (discussed *infra*); *Hawthorne v. Calef*, 69 U.S. (2 Wall.) 10 (1865); *Bronson v. Kinzie*, 42 U.S. (1 How.) 311 (1843); *Sturges v. Crowinshield*, 17 U.S. (4 Wheat.) 122 (1819). The landmark 1934 decision of this Court in *Blaisdell*, of course, allowed the States newly broadened powers to adjust the terms and conditions for payment of obligations. But the Court made plain almost immediately that this expanded power, while permitting limited measures such as moratoria on payments or foreclosures that nonetheless protected obligees, stopped well short of the power to cancel obligations outright. *See W. B. Worthen Co. v. Thomas*, 292 U.S. 426 (1934) (unanimous, per Hughes, C.J.); *W. B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1935) (unanimous, per Cardozo, J.).

Forty years later, the Court similarly invoked the Contract Clause to bar an attempt by New Jersey to change retroactively its obligations to bondholders, noting that "the Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties." *United States Trust Co.*, 431 U.S. at 17. And in *Allied Structural Steel*, the Court barred a narrowly focused imposition of additional duties on parties to a contract, expressly rejecting the dissent's notion that "the Clause forbids only state laws that diminish the duties of a contractual obligor and not laws that increase them." 438 U.S. at 244 n.16. While divided on how broadly the Contract Clause should be read, the Court was unanimous in concluding that the Clause still

served its historical purpose of limiting the power of States simply to relieve private parties of their preexisting obligations. *See id.* at 242-44; *id.* at 256-57 (Brennan, J., dissenting).

This long line of decisions thus establish a critical guide to the meaning of the prevailing Contract Clause standards. It is now accepted doctrine that impairments sometimes are constitutional, but only if "the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption," and "[t]he severity of the impairment [will] increase the level of scrutiny to which the legislation will be subjected." *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 412, 411 (1983) (internal quotation marks omitted); *see Keystone*, 480 U.S. at 504-05. No matter how noble the purpose, however, this Court has yet to hold that extinguishing plain debts to free up money to make available to others, without conditions protecting the obligees, is a "reasonable" and "appropriate" *means* to serve the purpose.

2. The Due Process Clause, likewise, has imposed significant limits on the ability of States to extinguish existing rights to payment of matured obligations. In *Steamship Co. v. Joliffe*, 69 U.S. (2 Wall.) 450 (1864), the Court, speaking both in terms of contracts and of rights to payment generally, stated: "When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement." Similarly, the Court in *Ettor*, 228 U.S. at 156, stressed that a right to payment for damage to property, "fixed by the law in force when their property was damaged for public purposes, . . . cannot be defeated by subsequent legislation." By the early 1930s, the Court had established a "general rule that it is not consistent with due process to take away from a private party [by subsequent legislative action] a right to

recover the amount that is due when the act is passed." *Graham v. Goodcell*, 282 U.S. 409, 426 (1931); *see Coombes*, discussed *infra*; *Forbes Pioneer Boat Line v. Board of Commissioners*, 258 U.S. 338, 339 (1922); *see also Perry v. United States*, 294 U.S. 330 (1935); *Lynch v. United States*, 292 U.S. 571 (1934).

These limitations, too, retain their vitality. Last Term, it was reconfirmed that sovereigns have " 'the power to enter contracts that confer vested rights, and the concomitant duty to honor those rights.' " *United States v. Winstar Corp.*, 116 S. Ct. 2432, 2459 n.28 (1996) (lead opinion). While the Court has recognized that the Due Process Clause, like the Contract Clause, does not prevent sovereigns from limiting certain obligations in order to serve an overriding public interest, *id.* at 2465, it has nonetheless demanded careful inquiry in instances where a government seeks to nullify obligations in pursuit of its "self-interest," *i.e.*, "instances in which the Government seeks to shift the costs of meeting its legitimate public responsibilities to private parties." *Id.* Thus, in determining whether " '[t]he retroactive aspects of [economic] legislation . . . meet the test of due process': a legitimate legislative purpose furthered by rational means" (*General Motors Corp.*, 503 U.S. at 191 (quoting *Pension Benefit Guaranty Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 730 (1984))), it is necessary, as it is under the Contract Clause, to examine whether the legislation simply goes too far in imposing on private entities burdens that in all fairness should be borne by the public. *See Armstrong v. United States*, 364 U.S. 40, 49 (1960).

3. The Eighth Circuit, while purporting to apply modern standards, actually misapplied them, granting far too much leeway for States to fund desired programs by means of cancelling outstanding obligations. The 1992 Amendment is, at bottom, nothing more than a mechanism by which funds owed to the Trustee were requisitioned to pay for previously unguaranteed benefits to Minnesota residents. Rather than electing to provide coverage for

resident beneficiaries out of general revenues, or by an increased assessment of Association members, the State chose instead to put the burden of providing for those beneficiaries on the Trustee (and its non-resident beneficiaries), using the device of eliminating most of the obligations previously assumed by the Association. Yet the majority below concluded that this legislative shifting of funds—rendered, after the fact, against a single creditor —could be justified by the State interest in providing for its own residents.

Whether judged under the standards of the Contract Clause or the Due Process Clause, this theory proves too much. If a State may relieve the Association of its obligation to pay funds owed to the Trustee, in an effort to free up funds for payment to residents instead, it is not apparent why a State may not likewise release itself from an obligation to pay debts to its creditors, on the ground that it wishes to conserve its resources for its residents. The diversion of funds to its own citizens is obviously a rational objective, viewed solely in terms of the State's own interest. But this Court has made very clear that reliance on this sort of self-defining interest—avoiding payment of obligations so that additional funds are then available for public use—is *not* an adequate justification under the Contract Clause, pointing out that "[a] governmental entity can always find a use for extra money, especially when taxes do not have to be raised." *United States Trust Co.*, 431 U.S. at 26. Indeed, the Court has explained: "If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." *Id.*

A State, of course, has a legitimate interest in providing aid to its own citizens. But this Court has never held that this interest, standing alone, justifies resort to the extraordinary means of retroactively cancelling obligations, whether public or private, in order to raise the funds to do so. And it would be particularly out of place to allow

that shifting of burden here, given that the legislation, insofar as it is retroactive, applies *only* to petitioner Trustee. This Court has noted that the targeting of legislation at a small class of private parties—singling them out for unique burdens—requires especially close scrutiny of claims that the law is necessary to achieve legitimate public ends. *See Allied Structural Steel*, 438 U.S. at 250 (striking down a law placing retroactive obligations on a small number of Minnesota employers, pointing out that "its narrow aim was leveled, not at every Minnesota employer, not even at every Minnesota employer who left the State, but only at those who had in the past been sufficiently enlightened as voluntarily to agree to establish pension plans for their employees"); *see also Nieves v. Hess Oil Virgin Islands Corp.*, 819 F.2d 1237, 1249 (3d Cir.), *cert. denied*, 484 U.S. 963 (1987) ("[l]egislation aimed retroactively to benefit or burden a few identifiable persons is particularly vulnerable to the charge that it is not reasonably related to the asserted public purposes"). The 1992 Amendment adopts an improper means of serving a legitimate end, "forcing some people alone to bear public burdens which . . . should be borne by the public as a whole." *Armstrong*, 364 U.S. at 49.

This same reasoning properly informs due process analysis as well. Even under the familiar rational basis standard, it would be anomalous to hold that a State may forgive its own debts, or the debts of private parties, on the unvarnished ground that it would prefer to see the funds diverted to other purposes. This Court has, of course, upheld retroactive legislation that places burdens on employers for the benefit of employees who suffered the harm addressed by the law in the course of their employment. *See, e.g., Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976); *R.A. Gray & Co., supra; Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993). But no comparable basis in causal responsibility is present in

this case: there is no claim whatsoever that the Trustee—or the non-resident beneficiaries, a class of non-voters on whom the burden of providing for resident beneficiaries has now effectively been placed (*see* Pet. App. 31a (Richard S. Arnold, C.J., dissenting))—are in any way responsible for the prior lack of coverage for the newly benefited group. Without such a nexus, the power to readjust the benefits and burdens of economic life does not reach this far: it does not encompass the retroactive cancellation of obligations for the simple purpose of putting the money to use, even good use, in other ways. *See Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 229 (1986) (O'Connor, J., concurring) (stressing critical importance, in upholding retroactive imposition on employers, of premise that their conduct was responsible for the employee harm addressed by the new imposition). As the Court has said in a related context, " '[a] strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.' " *Dolan*, 512 U.S. at 396 (quoting *Pennsylvania Coal Co. v. Mahan*, 260 U.S. 393, 416 (1922)).

B. THE EIGHTH CIRCUIT IMPROPERLY JUSTIFIED THE IMPAIRMENT AS "CURATIVE"

The Eighth Circuit, in addition to relying on the public purpose of aiding residents, justified cancellation of the Association's obligations to the Trustee on the ground that the legislation was "curative" in nature. It thus suggested that the Amendment was akin to laws like the prompt repeal of an obviously unintended income-tax benefit at issue in *Carlton*. This reliance on the "curative" characterization illustrates the very danger stressed by Justice O'Connor in *Carlton*: virtually *all* repealing legislation is curative in a general sense, reflecting dissatisfaction with the consequences of the repealed law. 512 U.S. at 36 (concurring opinion). As a defense of obligation-cancelling legislation, the "curative" label, or the notion

of "unintended windfall," loses all meaning if it is stretched to cover this case.[9]

First, prior law was "unambiguous"—as the Minnesota Court of Appeals held in 1987 and the Supreme Court of Minnesota reiterated in 1994. *See* pages 6, 10-11, *supra*; Pet. App. 75a, 76a ("resident trustees who own unallocated annuity contracts are unambiguously entitled to coverage under the terms of the Act prior to the Amendment"; resident contract owners are "plainly entitled to coverage").[10] Thus, the state supreme court specifically rejected the Association's contention that this construction would lead to "an unintended windfall for non-resident employees who are participants in pension plans with a Minnesota trustee." *Id.* Second, after this clear coverage was judicially confirmed in 1987, the Minnesota legislature—unlike the Congress in *Carlton*—did not take prompt action to "correct" the result. Rather, despite amending the Act in other respects, the legislature left this coverage in place for five years—until the 1992 Amendment. Third (and consistent with the absence of any prompt alteration of the Act), the Association itself took advantage of the coverage of unallocated annuity con-

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[9] The Contract Clause decision relied on for this principle by Judges Loken and Bowman (Pet. App. 23a), *i.e.*, *El Paso v. Simmons*, 379 U.S. 497 (1965) (*see United States Trust Co.*, 431 U.S. at 21; *Energy Reserves*, 459 U.S. at 412), involved nothing like an outright abrogation of a debt. In *El Paso*, a State's sale of public land provided that, if the buyer should ever default on a long-term series of payments, the land would revert to the State, subject to reinstatement whenever the amounts due were paid, unless a third party had not acquired the land in the meantime. Forty years later, to achieve certainty in land ownership, the State set a five-year limit on this reinstatement right. In a case involving a plaintiff whose default occurred years *after* the new five-year period was enacted—so that he had ample notice of the available period of reinstatement—the Court held that this new limitations period was valid.

[10] In *Carlton*, the Court did not give an authoritative construction of the repealed income-tax provision, stating only that "the reading of the original statute on which [the respondent] relied appears to have been correct." 512 U.S. at 33.

tracts owned by resident trustees, which greatly increased its assessment base, as the state supreme court stressed. Pet. App. 77a.

The decisions of the Minnesota courts thus establish that, for years, the Association was unmistakably aware of and benefited from the Act's judicially confirmed, unambiguous coverage of its obligations to trustees. The legislature left that coverage in place. The late-in-the-day 1992 Amendment is a *post hoc* renunciation that is not the sort of "curative" action that merits exceptional deference under the Contract Clause or the Due Process Clause.

C. THE EIGHTH CIRCUIT IMPROPERLY DECLINED TO FOLLOW *COOMBES v. GETZ* AND ITS PREDECESSORS

1. In *Coombes v. Getz*, building on prior decisions, this Court applied both the Contract Clause and the Due Process Clause to strike down legislation in a situation strikingly similar to this one. The Court held that a creditor of a corporation was able to collect its debt from a director of that corporation—pursuant to a state constitutional provision making directors liable to creditors for any funds embezzled or misappropriated by officers of the corporation—even though the law had subsequently been repealed. Although the state supreme court had found that liability of the director had terminated upon repeal of the provision, this Court flatly rejected that analysis, stating that "neither vested property rights nor the obligation of contracts of third persons may be destroyed or impaired." 285 U.S. at 442. The Court then concluded that, by virtue of the constitutional provision making the directors liable to creditors, "a contractual obligation arose; and the right to enforce it, having become vested, comes within the protection of both the contract impairment clause in article 1, § 10, and the due process of law clause in the Fourteenth Amendment, of the federal Constitution." 285 U.S. at 448. As a result

of that protection, the later repeal of the provision was ineffective to destroy the obligation that previously existed.

The situation here is fundamentally the same. By statute Minnesota established an interlocking system of rights and responsibilities, by which the Association "guarantee[d]" and "assume[d]" the obligations of insurance companies and, in turn, levied assessments against insurance companies based on such obligations. Like the obligation at issue in *Coombes*, the obligation owed to the Trustee plainly fell within the terms of the prior law and, but for the subsequent legislation cancelling it, was a binding debt of the Association. Thus, if the principles set forth in *Coombes* and its predecessors remain good law, the subsequent legislation could not be held to deprive the Trustee of its right to payment.

2. Not only is the Eighth Circuit's judgment inconsistent with *Coombes*, but a majority of the Eighth Circuit specifically rejected *Coombes* and its precursors as due process precedents, deeming them no longer valid (and the two concurring judges then ignored *Coombes* on the issue of justifying the acknowledged substantial impairment under the Contract Clause). That treatment gives too little stature to decisions of this Court. The Court has stated pointedly that, "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez De Quijas*, 490 U.S. at 484-85; *see Agostini v. Felton*, No. 96-552 (June 23, 1997), slip op. 31-32. This Court has never overruled *Coombes* or the decisions it followed.

The judges below were also incorrect in believing that the *Coombes* line of authority is out of keeping with modern constitutional doctrines. As shown in Parts A and B, *supra*, this Court, while approving various retro-

active "adjustments" of economic interests, has never abandoned the fundamental principle that a naked elimination of an unambiguous debt simply goes too far. The "severity" of such an imposition on private parties (*see Keystone*, 480 U.S. at 504 n.31; *Energy Reserves*, 459 U.S. at 411) makes it an unreasonable means of serving a public purpose. And that is so regardless of whether the governing standard is derived from the Contract Clause or the Due Process Clause.

3. The five judges of the Eighth Circuit who found no contract subject to Contract Clause protection (Pet. App. 7a-10a) also paid inadequate respect to *Coombes*—as a majority of the Eighth Circuit judges concluded in finding that contract rights were indeed impaired. The five minority judges did no more than make a passing "*Cf.*" reference to *Coombes*, stating that the annuities here were not "created in pursuance of the statutory obligation." *Id.* at 10a. But in *Coombes*, the corporation's debts to third parties that were protected by the director liability (prior to its repeal) likewise were not created pursuant to the state-law provision establishing that liability. Nevertheless, the Court in *Coombes* held that, upon the event triggering the liability to the corporation's creditors, the directors assumed a contractual obligation that "acquired an independent existence competent to survive the destruction of the provision which gave it birth." 285 U.S. at 442. *Coombes* cannot fairly be distinguished on this point.

At the root of the error committed by the five minority judges on this issue was their mistaken assumption that "statutory" rights and "contractual" rights are mutually exclusive categories. *See* Pet. App. 10a ("[w]e conclude that the Association's obligations are statutory in nature rather than contractual"). That is simply wrong. *See Coombes, supra; Indiana ex rel. Anderson v. Brand*, 303 U.S. 95 (1938); *United States Trust Co., supra. See also Nieves*, 819 F.2d at 1243-48. While not all statutory

obligations are regarded as contractual ones, the law here unequivocally imposed substantive obligations on the Association to, *inter alia*, "guarantee, assume or reinsure . . . the covered policies of residents"—purchased from insurers competing in the financial marketplace—and directed the Association to "make or cause to be made prompt payments of the impaired insurer's *contractual obligations* which are due and owing to residents." Act § 61B.06 subd. 2 (emphasis added). The majority correctly concluded that the provisions were more than mere statutory declarations of policy, free to be altered without regard to the Contract Clause.[11] Accordingly, the 1992 Amendment's impairment of petitioners' contracts were subject to Contract Clause standards—which, as we have argued, prohibit this impairment: although the State may come to the aid of its residents, it may not get the resources to do so by cancelling the obligations owed to private parties under prior law.

* * * *

The decision below, if allowed to stand, would do what this Court has never done: establish a broad power for state governments to cancel outstanding obligations in order to finance other projects. Although this Court over time has relaxed the strictest limitations of the Contract Clause and Due Process Clause, it has nevertheless continued to apply both provisions to protect the essential right of creditors to have their obligations redeemed. The court of appeals was plainly aware of that tradition, but it

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[11] Although the Minnesota Supreme Court, for its part, relied on the fact that "[t]he Association's statutory obligations are not coextensive with the contractual obligations of a failed insurer" (Pet. App. 79a), that observation seems to mix together two separate concepts: whether there is a contractual obligation and what the extent of that contractual obligation might be. A guarantor may elect not to guarantee the entire obligation owing to a particular creditor, but that decision does not mean that it is any less responsible for the obligation that it does assume.

ultimately determined that it should be honored more in the breach, than in the observance. That departure—contrary to precedent and misguided in theory—warrants further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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